



Federal Communications Commission
Media Bureau
Policy Division
445 12th Street SW
Washington, DC 20554

November 3, 2016

VIA EMAIL AND CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED

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RE: Gray Television Licensee, LLC, Petition For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin, MB Docket No. 16-293
DISH Feasibility Certification, dated Aug. 19, 2016, filed in MB Docket No. 15-71 in response to *Pre-Filing Coordination Letter for WSAW-TV*

Dear Ms. Minea:

The Media Bureau is evaluating the DISH Network L.L.C. ("DISH") Feasibility Certification relevant to the above-referenced satellite market modification petition ("Petition"). Gray Television Licensee, LLC ("Gray") has filed the above-referenced Petition seeking to modify the local satellite carriage television market of WSAW-TV, Wausau, Wisconsin (the "Station" or "WSAW") to include two satellite communities – Ashland and Iron counties in Wisconsin – located within the Duluth-Superior Designated Market Area (DMA). During the pre-filing coordination process, Gray sought and obtained a Feasibility Certification from DISH Network L.L.C. ("DISH") about whether carriage of the Station by DISH was feasible in the satellite communities at issue. In its Feasibility Certification, DISH claimed carriage of the Station would be infeasible due to the costs of customer equipment changes to accommodate reception from different orbital positions. In its Petition, Gray challenges DISH's infeasibility claim and the sufficiency of DISH's Feasibility Certification.

Section 338(l)(3) of the Communications Act does not require a satellite operator to carry a station because of a market modification request if it is not technically and economically feasible for the

carrier to accomplish the carriage by means of its satellites in operation at the time of the determination.¹ In the 2014 *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that the resulting carriage from a market modification is infeasible.² The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis. With respect to claims of "spot beam coverage infeasibility," the Commission concluded that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried.³ Therefore, the Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury.⁴ With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review such assertions on a case-by-case basis.⁵ To demonstrate such infeasibility, the Commission said a carrier must provide detailed technical and/or economic information to substantiate its claim of infeasibility.⁶

We require additional information in order for us to consider and evaluate DISH's claim of infeasibility due to the costs associated with changing customer satellite dishes to accommodate reception from different orbital locations. We are therefore requesting that DISH provide more detailed technical and/or economic information to substantiate its claim of infeasibility, including at least the following information. DISH should also provide supporting documentation as appropriate.

¹ 47 U.S.C. § 338(l)(3) ("[a] market determination ... shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination."). See also 47 C.F.R. § 76.59(e);

² *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406, 10435, para. 38 (2015) ("*STELAR Market Modification Report and Order*") (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by operation of their satellites).

³ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10431-32, para. 32.

⁴ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435-36, para. 39.

⁵ *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10438, para. 42.

⁶ *Id.* See also *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage "through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible").

Provide the Following Information Separately For Each Satellite Community (i.e., Ashland County, WI and Iron County, WI):

1. Total number of customers in each county.
2. Customer revenue for each county.
3. List and describe operational and billing changes referenced in bullet 7 of your Feasibility Certification, including the costs associated with such changes.
4. Total number of customers needing an adjustment of existing equipment in order to effectuate carriage of the Station in the county.
5. Total number of customers needing replacement of existing equipment/dish in order to effectuate carriage of the Station in the county.
6. Total number of customers needing installation of new equipment/ second dish in order to effectuate carriage of the Station in the county.
7. Total number of customers needing equipment changes (adjustment or replacement of existing dish or installation of second dish) in order to effectuate carriage of the Station in the county.
8. Total number of customers that could receive the Station without any equipment changes (adjustment or replacement of existing dish or installation of second dish).
9. Cost of a service call, including transportation, labor, and materials to adjust existing equipment. Describe how these costs are calculated.
10. Cost of a service call, including transportation, labor, and materials to replace existing equipment / dish. Describe how these costs are calculated.
11. Cost of a service call, including transportation, labor, and materials to install new equipment / second dish. Describe how these costs are calculated.
12. Costs of service calls that combine equipment changes in questions 9, 10 &/or 11 (adjustment or replacement of existing dish or installation of second dish). Describe how these costs are calculated.
13. Costs to inform customers of needed equipment changes in order to receive the Station (email, telephone consultation, marketing, etc.). Describe how these costs are calculated.
14. Provide estimates for the current year for the following costs and describe how these costs are calculated:
 - a. Labor Cost associated with service, repair, and replacement for customer equipment.
 - b. Communication with customers (for various reasons, such as technical support).
 - c. Transportation costs for equipment servicing.
 - d. Replacement and maintenance of customer equipment.
15. According to DISH's certification, WSAW-TV is carried on the 129° W.L. orbital slot. Confirm and list all stations and/or channels (with network affiliations) carried on the 129° W.L. orbital slot.
16. List which spot beam(s)/orbital slot(s) carry the local broadcast stations for the county. If more than one, indicate which local broadcast stations are on which spot beams/orbital slots.

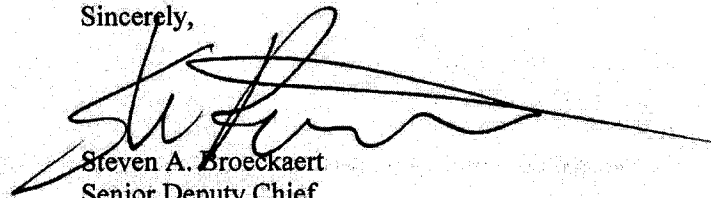
Filing Requirements:

Delivery Requirements. DISH must submit its response within twenty (20) days from the date of this letter. The response must be filed electronically in the above-referenced docket, MB Docket No. 16-293, using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>. A copy of the response must be transmitted via e-mail to Evan.Baranoff@fcc.gov.

Affidavit Requirement. We direct DISH to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of DISH with personal knowledge of the representations provided in DISH's response. The affidavit or declaration must verify the truth and accuracy of the information therein, state that all of the information requested by this letter that is in DISH's possession, custody, control, or knowledge has been produced, and state that any and all documents provided in its responses are true and accurate copies of the original documents. In addition to such general affidavit or declaration of the authorized officer of the DISH described above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual rather than his or her own knowledge, and if multiple DISH employees contribute to the response, DISH shall provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.

Request for Confidential Treatment. If your response includes materials or information that you wish to be withheld from public inspection pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459, the response you submit to the Commission should include both an unredacted and a redacted version, along with your request for confidential treatment. Please contact Evan Baranoff at (202) 418-7142 if you have any questions.

Sincerely,



Steven A. Broeckaert
Senior Deputy Chief
Policy Division, Media Bureau

cc: Jason Rademacher, counsel for Gray (via email)
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